

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 256 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DIVALIBEN NENSHI, PRATIMA C. VORA

Versus

AJEPAL JAGIR TRUST THRO' SOLE TRUSTEE & ADMINISTRATOR

Appearance:

MR DEEPAK M SHAH for Petitioner
MR YS MANKAD for Respondent No. 1
RULE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/07/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original tenant [first defendant] who was sued by the first respondent - landlord [alongwith

respondents No.2, 3 and 4 as defendants No.2, 3 and 4] for a decree of eviction under the provisions of the Bombay Rent Act. The landlord alleged that the original tenant [first defendant] has unlawfully sublet the suit premises to defendants No.2 and 3, and is therefore entitled to a decree for eviction u/s 13[1][e] of the Bombay Rent Act.

2. The trial Court, after appreciation of the evidence on record, came to the conclusion that the landlord had succeeded in proving that the original tenant [first defendant] had unlawfully sublet the suit premises to defendants No.2 and 3, and that during the pendency of the suit, the first defendant had sublet the suit premises to defendant No.4. The trial Court therefore passed a decree for eviction u/s 13[1][e] of the Rent Act.

3. The original tenant [first defendant] thereupon preferred an appeal before the lower appellate Court, who on a total re-appreciation of evidence on record, confirmed the findings and the decree for eviction passed by the trial Court.

3.1 Hence, the present revision by the original tenant [first defendant].

4. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

5. Only a few salient features require to be noted.

5.1 The landlord had let out the suit premises to the

first defendant as its tenant. There is no controversy on this point. However, when the landlord came to learn that he had sublet the same to defendants No.2 and 3, a statutory notice was issued to the first defendant. Thereupon, the second and third defendants filed an application before the Mamlatdar, Anjar wherein they specifically averred that they have received possession of this property as sub-tenants of defendant No.1, and since they are in possession of the property, they should be treated as direct tenants of the landlord - trust. Thus, even prior to the suit, second and third defendants had specifically put up a case that they were the sub-tenants of the original defendant No.1.

5.2 The second defendant has filed written statement exh.8, wherein he has put up a specific case that he had taken the suit property on lease from the first defendant, and that he is paying rental to the first defendant. He has also contended in the said written statement that he had filed an application before the Mamlatdar to treat him as a direct tenant. Further more, the second defendant also pleaded in the written statement that the third defendant has ceased to be his partner, and therefore, has no interest in the suit property. He further declared by a pursis exh.52 filed in the trial Court on 13th July 1978, that he has also left the possession of the suit premises, and that thereafter the first defendant [original tenant] has once again sublet it to defendant No.4. The second defendant therefore pleaded that he has no concern with the suit premises.

5.3 The third defendant did not file any written statement, probably because the averments made by the second defendant were factually correct, and that the third defendant had ceased to be the partner of the second defendant, and therefore, had no interest in the suit premises.

5.4 It is also pertinent to note that the fourth defendant had filed a written statement at exh.53 whereby she specifically pleaded that she had taken the suit premises on rent on 10th of March 1978 from the power of attorney holder of the first defendant, and that since she is ready and willing to become a direct tenant of the landlord - trust, possession should not be recovered from her.

6. The trial Court, after appreciating the totality of the evidence on record in the light of the aforesaid pleadings, came to the conclusion that the first

defendant was a monthly tenant, and that his tenancy was properly terminated by a legal and valid notice, and that the first defendant had sublet the suit premises unlawfully to the defendants No.2 and 3, and had further more, during the pendency of the suit, sublet the suit premises to the fourth defendant. The trial Court therefore passed a decree for eviction against the defendants u/s 13[1][e] of the Rent Act.

7. The decree of eviction passed by the trial Court was challenged in appeal by the first defendant, but not by the fourth defendant, who was in actual possession. The findings of fact recorded by the two Courts below are not based merely upon the pleadings of the parties, and not merely upon the admissions made by defendants No.2 and 4 in their respective written statements. These findings are also supported by other oral and documentary evidence on record. The plaintiff has examined one Laherchand Pranjivan Parekh who is the Superintendent in Jagir branch of Collector's office. He has deposed as to subletting by the first defendant to defendants No.2 and 3 prior to the filing of the suit, and further subletting to defendant No.4 during the pendency of the suit. No doubt, the witness of the first defendant [the power of attorney], has orally deposed that the first defendant had not sublet the premises to defendants No.2 and 3. However, both the Courts below have not accepted this oral version because the same is falsified by the documentary evidence on record. Exhs. 78 and 79 are extracts from the municipal register maintained under the Bombay Shops & Establishment Act, which show that in the year 1976-77 and 1977, 1978, it was the second defendant who was running a business in the suit premises.

7.1 Further more, the witness of the first defendant has admitted in his deposition that, during the pendency of the suit, the first defendant has given the premises to the fourth defendant and that the fourth defendant is paying Rs.40/- per month for the same. However, according to the first defendant, this is not subletting, but it is mere grant of a licence.

7.2 The theory of merely granting a license deserves to be rejected on the face of it. The defendant's power of attorney has admitted that the first defendant has gone to Bombay long ago, and that exclusive possession had been handed over by first defendant to the second defendant [prior to the suit], and the same was handed over to the fourth defendant during the pendency of the suit, and further more that he had been recovering the relevant consideration from each of them. In this

context, it is not necessary to discuss in detail the relevant judicial pronouncements. Both the Courts below have, in my opinion, rightly interpreted exh.115, by which the first defendant has transferred possession in favour of defendant No.4. Obviously this is a document of subletting and not of a license.

7.3 It is pertinent to note that it has never been the case of the first defendant that under the terms of the tenancy which he had obtained from the landlord, he had a right to transfer possession in favour of a licensee. Thus, this is a mere theory which does not find support either in fact or in law.

8. In the premises aforesaid, the judgement and decree of the two Courts below are eminently sustainable and are required to be confirmed. Consequently, there is no substance in the present revision, and the same is therefore dismissed. Rule is discharged with no orders as to costs. Interim relief stands vacated.

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